UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BARRY HIRSCHHORN, Plaintiffs,	:	
-against-	:	
FAMILY HEALTH INSTITUTE, INC., Defendant.	:	DEFEENDANT'S ANSWER & AFFIRMATIVE DEFENSES INDEX NO. 16 Civ. 6288 (RJS)

Defendant, FAMILY HEALTH INSTITUTE, INC., (hereinafter "Family Health") by and through their attorneys Arent Fox LLP, states its Answer to the Complaint:

NATURE OF THE ACTION

1. To the extent paragraph 1 of Plaintiff's complaint contains allegations, Family Health denies the allegations contained in paragraph 1 of the complaint.

2. To the extent paragraph 2 of Plaintiff's complaint contains allegations, Family Health denies the allegations contained in paragraph 2 of the complaint.

JURIDICTION AND VENUE

3. To the extent that paragraph 3 of Plaintiff's complaint contains allegations, Defendant denies the same, but acknowledges that Plaintiff claims 28 U.S.C. §1331 as the basis of this Court's jurisdiction.

4. To the extent that paragraph 4 of Plaintiff's complaint contains allegations, Defendant denies the same, but acknowledges that Plaintiff claims 28 U.S.C. §1367 as the basis of this Court's jurisdiction.

5. To the extent that paragraph 5 of Plaintiff's complaint contains allegations, Defendant denies the same, but acknowledges that Plaintiff claims 28 U.S.C. §1391(b) as the basis of venue in this district.

TRIAL BY JURY

6. Defendant acknowledges that Plaintiff requests a trial before a jury.

THE PARTIES

7. Defendant denies sufficient knowledge or information to form a belief as to the allegations contained in paragraph 7 of the complaint.

8. Defendant admits that Family Health is incorporated in New York but denies that its principal place of business is at 16 East 16th Street, New York, New York 10003.

FACTS

9. Defendant admits the allegations contained in paragraph 9 of the complaint.

10. Defendant denies the allegations contained in paragraph 10 of the complaint.

11. Defendant denies sufficient knowledge or information to form a belief as to the allegations contained in paragraph 11 of the complaint.

12. Defendant denies sufficient knowledge or information to form a belief as to the allegations contained in paragraph 12 of the complaint.

13. Defendant admits the allegations contained in paragraph 13 of the complaint.

14. Defendant admits the allegations contained in paragraph 14 of the complaint.

15. Defendant admits Ms. Ovodenko had supervisory authority over Plaintiff and Ms. Estevez but denies the remaining allegations contained in paragraph 15 of the complaint.

16. Defendant denies sufficient knowledge or information to form a belief as to why Mr. Hirschhorn chose to involve the Regulatory Compliance Department and denies the remaining allegations contained in paragraph 16 of the complaint.

17. Defendant denies the allegations contained in paragraph 17 of the complaint.

18. Defendant admits that Mr. Hirschhorn went on FMLA leave from July 2015 to October 2015 but denies sufficient knowledge or information to form a belief as to the remaining allegations contained in paragraph 18 of the complaint.

19. Defendant admits the allegations contained in paragraph 19 of the complaint.

20. Defendant denies the allegations contained in paragraph 20 of the complaint but acknowledges that Mr. Hirschhorn's office had been changed.

21. Defendant denies the allegations contained in paragraph 21 of the complaint.

22. Defendant denies the allegations contained in paragraph 22 of the complaint.

23. Defendant denies the allegations contained in paragraph 23 of the complaint.

24. Defendant denies the allegations contained in paragraph 24 of the complaint.

25. Defendant denies the allegations contained in paragraph 25 of the complaint.

26. Defendant denies the allegations contained in paragraph 26 of the complaint.

27. Defendant denies sufficient knowledge or information to form a belief as to the allegations contained in paragraph 27 of the complaint.

28. Defendant denies the allegations contained in paragraph 28 of the complaint.

29. Defendant denies the allegations contained in paragraph 29 of the complaint but acknowledges that Mr. Hirschhorn made complaints to Family Health's Human Resources ("HR") Department.

30. Defendant denies the allegations contained in paragraph 30 of the complaint but acknowledges that the HR Department conducted investigations.

31. Defendant denies the allegations contained in paragraph 31 of the complaint but acknowledges that Mr. Hirschhorn met with a representative of the Labor Relations Department to discuss issues related to his employment.

32. Defendant denies the allegations contained in paragraph 32 of the complaint but acknowledges that Mr. Hirschhorn was informed that there was no basis for his claims of

discrimination or retaliation.

33. Defendant denies the allegations contained in paragraph 33 of the complaint and acknowledges that Mr. Hirschhorn was absent from work on several occasions.

34. Defendant denies the allegations contained in paragraph 34 of the complaint.

35. Defendant denies the allegations contained in paragraph 35 of the complaint.

36. Defendant denies the allegations contained in paragraph 36 of the complaint.

37. Defendant denies the allegations contained in paragraph 37 of the complaint.

38. Defendant denies the allegations contained in paragraph 38 of the complaint.

39. Defendant repeats and realleges each and every answer of the preceding paragraphs 1- 38 with the same force and effect as though fully set forth herein.

40. Defendant admits the allegations contained in paragraph 40 of the complaint.

41. Defendant denies the allegations contained in paragraph 41 of the complaint.

42. Defendant denies the allegations contained in paragraph 42 of the complaint.

43. Defendant denies the allegations contained in paragraph 43 of the complaint.

44. Defendant denies the allegations contained in paragraph 44 of the complaint.

45. Defendant denies the allegations contained in paragraph 45 of the complaint.

46. Defendant repeats and realleges each and every answer of the preceding paragraphs 1- 45 with the same force and effect as though fully set forth herein.

47. Defendant admits the allegations contained in paragraph 47 of the complaint.

48. Defendant denies the allegations contained in paragraph 48 of the complaint.

49. Defendant denies the allegations contained in paragraph 49 of the complaint.

50. Defendant denies the allegations contained in paragraph 50 of the complaint.

51. Defendant denies the allegations contained in paragraph 51 of the complaint.

52. Defendant repeats and realleges each and every answer of the preceding paragraphs 1- 51 with the same force and effect as though fully set forth herein.

53. Defendant admits the allegations contained in paragraph 53 of the complaint.

54. Defendant denies sufficient knowledge or information to form a belief as to the allegations contained in paragraph 54 of the complaint.

55. Defendant denies the allegations contained in paragraph 55 of the complaint.

56. Defendant denies the allegations contained in paragraph 56 of the complaint.

57. Defendant denies the allegations contained in paragraph 57 of the complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff fails to state a claim upon which an award of punitive damages can be granted.

THIRD AFFIRMATIVE DEFENSE

Plaintiff fails to state a claim upon which an award of costs and attorneys' fees can be granted.

FOURTH AFFIRMATIVE DEFENSE

Defendant’s actions to terminate Plaintiff were based on legitimate non-discriminatory business reasons.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff is barred from relief due to his failure to mitigate damages.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff is estopped and barred by his own conduct from recovering any relief.

SEVENTH AFFIRMATIVE DEFENSE

The complaint is barred in whole or in part by Plaintiff’s own contributory and/or comparative fault.

EIGTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because Defendant exercised reasonable care to prevent unlawful discrimination and harassment and Plaintiff failed to avail himself of the opportunities provided to him by Defendant.

NINTH AFFIRMATIVE DEFENSE

Defendant adopts any and all affirmative defenses available to it that may later be deemed relevant to these proceedings and specifically reserves the right to amend its Answer to assert such defenses.

WHEREFORE, Defendant requests judgment dismissing the Complaint against it with prejudice, together with its attorneys' fees and costs of suit.

Dated: New York, New York
October 31, 2016

Arent Fox LLP

By: /s/ Darrell S. Gay

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